

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JUDGMENT IN A CIVIL CASE

DAVID NEWKIRK,

Petitioner,

vs.

9:12-CV-00386 (JKS)

MICHAEL CAPRA, Superintendent,
Sing Sing Correctional Facility,
Respondent.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED, that pursuant to the Memorandum Decision and Order of the Hon. James K. Singleton, Jr., United States District Judge, dated March 21, 2014, the Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus (Dkt. No. 3) is **DENIED. IT IS FURTHER ORDERED THAT** the Court grants a Certificate of Appealability solely to his claim that the trial court erred in denying his motion for a mistrial after the victim violated the court's Molineux ruling. 28 U.S.C. § 2253(c); Banks v. Dretke, 540 U.S. 668, 705 (2004) ("To obtain a certificate of appealability, a prisoner must 'demonstrat[e] that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'"(quoting Miller-El, 537 U.S. at 327)). Any further request for a Certificate of Appealability must be addressed to the Court of Appeals.

DATED: March 21, 2014


Clerk of Court

ENTERED 3/21/2014
BY PTM

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PTM
Deputy Clerk`